Programmatic Approaches to Section 106 Compliance

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What NHPA section 106 requires

- For agency undertakings:
  - Take into account effects on historic properties
  - Provide ACHP a chance to comment, as specified in 36 CFR Part 800
- Default path is case by case, step by step
  - Assess undertaking
  - Identify historic properties
  - Assess adverse effects
  - Resolve adverse effects

Program alternatives

- Case-by-case not always most efficient/effective way to do 106
- ACHP regs provide for “program alternatives”
- Common features of program alternatives:
  - Allow tailored approaches to particular situations
  - Allow tighter meshing of agency processes and 106 compliance
  - Developed in consultation with ACHP and others – not unilateral by agency

Five types per 36 CFR 800.14

- Programmatic agreement
- Program comment
- Exemption
- Alternate procedures
- Standard treatment

(in descending frequency of use)

Programmatic agreements

- Governs implementation of particular programs or resolution of complex situations
- Frequently used and well understood
- Negotiated among agency, S/THPO, maybe ACHP, and other appropriate parties

When to use

- When effects are similar/repetitive/multi-state/regional
- When effects cannot be predicted before undertaking approval
- When nonfederal parties are delegated decisionmaking responsibilities
- For routine management actions
- When circumstances warrant

Program comment

- ACHP comment on a *category of undertakings* in lieu of individual reviews
- Process:
  - Agency proposes program (already well coordinated)
  - ACHP consults with SHPO/THPOs
  - ACHP comments within 45 days
  - Agency executes program as commented on
- New alternative; not much use yet

Two variations so far

- One-time mitigation
  - Capehart-Wherry housing (done)
  - Bunkers/ammo plants/unaccompanied personnel housing (in development)
- Tailored continuing process/mitigation
  - Navy ships (in development)

Exemptions

- A program or category of undertakings is exempted from further review
- Criteria:
  - Is an undertaking
  - Potential effects foreseeable/minimal or not adverse
  - Consistent with purposes of NHPA
- New alternative; only two so far
  - Historic natural gas pipelines
  - Interstate highway system

Alternate procedures

- Agency procedures for implementing section 106 in lieu of ACHP regs
- Army procedures in place 2001
  - Installations in consultation may develop History Property Components with tailored SOPs for compliance steps
- FEMA procedures in development

Standard treatments

- ACHP may establish standard methods for treatment of
  - A category of historic properties
  - A category of undertakings
  - A category of effects
- New alternative -- none yet
  - Early discussions between ACHP and Navy on developing standard treatments that can be incorporated in project guide specifications

Summary

- Program alternatives require thought, work, and coordination, but can provide tighter linkage between agency programs and historic preservation
- Still plenty of opportunities to explore